IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-7-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.15066 of 2006

V.S.Subbarayan ... Petitioner

Vs.

1. The Principal,
Government Arts College (Men),
Krishnagiri, Dharmapuri District.

2. The Commissioner,
Collegiate Education,
Madras - 6. ... Respondents

This writ petition came to be numbered under Article 226 of Constitution of India, by way of transfer of O.A.No.735 of 1995 from the file of the Tamil Nadu Administrative Tribunal, with a prayer to call for the records of the respondents 1 and 2 in R.C.No.2064/B/93 dated 8.7.1994 and Na.Ka.No.15599/Aa3/94, dated 17.11.1994 respectively, quash the same and direct the respondents to allow the petitioner to retire from service on 30.6.1994 and to pay all the retirement benefits with cost within the stipulated time as directed by the Tribunal.

For Petitioner : Mr.P.V.Bakthavatchalam

For Respondents : Mr.I.Paranthaman,
Addl.Govt. Pleader

O R D E R

Petitioner seeks to quash the order of the respondents 1 and 2 dated 8.7.1994 and 17.11.1994 respectively and to direct the respondents to allow the petitioner to retire from service on 30.6.1994 and to pay all the retirement benefits with cost within stipulated time.

2. The brief facts necessary for disposal of the writ petition are as follows.

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(a) Petitioner was appointed as Lab Assistant in the in the Government Arts College (Men), Krishnagiri, in the year 1964 and subsequently he was promoted as Junior Assistant in the same College. At the time when he filed the original application he had put in more than 30 years of unblemished service.

(b) On 17.9.1993, petitioner proceeded on earned leave initially for three months and thereafter applied for unearned leave upto 30.6.1994. During leave period, he sent a letter of voluntary retirement on 9.3.1994. Till then his leave was neither sanctioned nor rejected. On 22.3.1994 first respondent sent a reply stating that the petitioner having applied for unearned leave upto 30.6.1994, three months notice period for voluntary retirement could be calculated only from 1.7.1994 and on that date petitioner should join duty and apply for earned leave for three months. Petitioner sent a reply on 24.3.1994 and stated that the notice period may be taken from 9.3.1994 to 9.6.1994 and permit him to go on voluntary retirement from 9.6.1994.

(c) On 17.3.1994 the second respondent called for records from the first respondent and on 14.6.1994 directed the first respondent to take action on the request of the petitioner as he is the appointing authority, empowered to consider the voluntary retirement request. The first respondent failed to pass any order and instead sent a letter on 1.7.1994 stating that the petitioner has to give three months notice after joining duty and he shall be eligible to get full pay during the notice period. Petitioner sent a reply on 5.7.1994 to the first respondent and on 8.7.1994 the first respondent rejected the request for voluntary retirement and directed the petitioner to apply for reposting to the second respondent as there is no vacancy in the first respondent college.

(d) Petitioner filed an appeal to the second respondent on 20.8.1994 and the second respondent rejected the appeal on 17.11.1990 by stating that as per the Government letter No.73081/FR3/91-7/P&AR dated 25.9.1992 request of the petitioner cannot be complied with and therefore the petitioner challenged the order rejecting the request for voluntary retirement and for consequential relief.

(e) The said orders are challenged on the ground that the first respondent failed to pass any order on the request made by the petitioner seeking voluntary retirement before the date of expiry of three months notice period and the petitioner is deemed to be retired from service and the Government letter referred above dated 25.9.1992 cannot be relied on as it is contrary to FR.56. It is further contended in the affidavit that the object behind permitting the Government servant to go on voluntary retirement is to enable the unemployed to get employment without waiting for normal retirement and the said object is defeated by the action of the respondents.

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3. The second respondent filed counter affidavit before the Tribunal wherein it is stated that while on leave, petitioner applied for Voluntary retirement and as the said request was not in normal format, he was informed by the first respondent on 22.3.1994 that he should tender three months notice and during that notice period he should either be in service or on leave with full pay. The petitioner having failed to comply with those conditions, the first respondent requested the second respondent to take appropriate action as per the rules and taking note of the Government letter dated 25.9.1992, petitioner's request for voluntary retirement was not accepted and a communication was sent to the petitioner on 1.7.1994 by the first respondent.

4. The learned counsel for the petitioner submitted that as per FR.56, the Government Servants are entitled to go on voluntary retirement on their attaining the age of 50, or who has completed 20 years of qualifying service by giving not less than three months notice in writing and the petitioner having been in service from 1964, he has completed about 30 years of service and he has also completed more than 50 years of age. The learned counsel further submitted that FR.56(e)(i)to(v) is the rule governing acceptance of voluntary retirement request. Learned counsel relying on the said rule submitted that nowhere in the rule it is stated that the person seeking voluntary retirement should be actually in service and not on leave while submitting the notice for voluntary retirement. Reliance made by the second respondent about the Government Letter is unsustainable in view of the statutory provision contained in FR.56, which deals with submission of voluntary retirement request and the manner in which it has to be processed, grounds on which it can be rejected and also deals with deemed acceptance. The learned counsel also submitted that the voluntary retirement request having been made by the petitioner on 9.3.1994, three months notice period expired on 9.6.1994 and if the same is not rejected within three months, the request is deemed to have been accepted under FR.56(f). The rejection order passed in this case is admittedly after 9.6.1994, after expiry of the notice period and therefore the said order is a nullity, as the petitioner is deemed to be retired from service voluntarily as on 9.6.1994 itself by operation of law. The learned counsel further submitted that the first respondent through his proceedings Na.Ka.No.2064/B/93, dated 14.10.2005 passed removal order against the petitioner subject to the result of the said O.A.No.735 of 1995, which is transferred and numbered as the above writ petition. Hence according to the learned counsel for the petitioner, the petitioner's removal from service is valid or not will depend upon the ultimate decision to be rendered in this case.

5. The learned counsel for the respondents submitted that since the petitioner was on leave, he is not entitled to submit request for voluntary retirement and only after his joining duty, he can apply for

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voluntary retirement and even after rejecting the request, petitioner has not reported to duty and therefore 17(b) charges were framed against the petitioner for his unauthorised absence and after enquiry, he was terminated from service subject to the result of this writ petition.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader.

7. The point in issue is whether the petitioner is entitled to submit his request for voluntary retirement on 9.3.1994 while he was on leave, requesting to relieve him from 9.6.1994 and whether the non-communication of rejection of request of the petitioner before the expiry of three months notice period can be treated as deemed acceptance of voluntary retirement and whether the respondents are justified in relying on the Government letter dated 25.9.1992 when there is statutory provision in FR.56 to decide the issue ?

8. The facts in this case are not in dispute i.e, petitioner applied for voluntary retirement on 9.3.1994 while he was on leave. Petitioner completed more than 20 years of service and also 50 years of age on the date when he submitted his application for voluntary retirement. The rule applicable to submit voluntary retirement is FR.56 (3). The said rule nowhere states that if a person is on leave, he is not entitled to submit application for voluntary retirement and only after joining in the post, he can submit his application. FR.56(3) is extracted hereunder for proper appreciation.

> "56(3) Voluntary Retirement.-
>
> (a) A Government servant who has attained the age of fifty-years or who has completed twenty years of qualifying service may retire from service by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer for information. Before giving such notice, he may satisfy himself by means of a reference to such authority that he has completed the required number of years of qualifying service.
>
> (b) The period of three months notice shall be reckoned from the date of receipt of notice by the appointing authority.
>
> (c) The three months notice may be given before the Government servant attains the qualifying age or the qualifying service, as the case may be, provided that the retirement takes place after attaining the specified age or completing the required number of years of qualifying service, as the case may be.

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(d)(i) A Government servant including a Government servant in the Tamil Nadu Basic Service retiring Voluntarily shall be given a weightage not exceeding five years, subject to the condition that the total qualifying service rendered by such Government servant, including weightage, does not in any case exceed Thirty years of qualifying service and it does not take him beyond the date of superannuation, as the case may be.

(ii) The weightage given shall be in addition to the qualifying service for purposes of pension and gratuity only, and it shall not entitle a Government servant retiring voluntarily to any notional fixation of pay or purposes of calculating the pension and gratuity. The pension shall be determined based on the 50% of the average emoluments drawn during the last ten months of service rendered, or, 50% of pay last drawn, plus dearness pay, if any, admissible from time to time, by the Government servants, whichever is higher."

Reasons for rejection of voluntary retirement are also enumerated in Rule 56(e)(i) to (v), which reads thus,

"56(e) notice of voluntary retirement given by a Government Servant shall be accepted by the appointing authority, subject to the following conditions being satisfied namely:-

(i) that no disciplinary proceedings are contemplated or pending against the Government Servant concerned for the imposition of a major penalty;

(ii) that no prosecution is contemplated or pending in a Court of Law against the Government servant concerned;

(iii) that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;

(iv) that no dues which cannot be recovered from his Death-cum-Retirement Gratuity are pending to be recovered from the Government servant concerned; and

(v) that there is no contractual obligation to serve the Government during the period in which the Government servant concerned seeks to retire voluntarily."

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None of the reasons contained in Rule 56(e)(i) to (v) states that a request for voluntary retirement can be rejected if a person apply for the same while he is on leave. The effect of not passing order before expiry of notice period is stated in FR.56(f), which reads as follows,

> "56(f) The appointing authority shall issue orders before the date of expiry of notice either accepting the voluntary retirement or not. Otherwise, the Government servant shall be deemed to have been retired voluntary from service at the end of the period of notice:
>
> Provided that where a Government servant under suspension or against whom disciplinary or criminal action is pending, seeks to retire voluntarily, specific orders of the appointing authority for such voluntary retirement is necessary. The appointing authority may with-hold the permission sought for by the Government servant, if any of the conditions specified in clause (e) are not satisfied."

As per Rule 56(f) before the date of expiry of the notice, if no order is passed accepting or rejecting the request, the Government servant shall be deemed to have been retired from service at the end of the notice period and as per the proviso, the request can be rejected only on the grounds stated in FR.56(e)(i) to (v).

9. As stated above, in this case, notice period expires on 9.6.1994. The rejection order is passed by the respondent only on 8.7.1994. The said rejection order is admittedly long after the expiry of the notice period of three months. The application submitted by the petitioner on 9.3.1994 is deemed to be accepted on the last date of notice period i.e., on 9.6.1994. Hence deemed acceptance of voluntary retirement has taken place from 9.6.1994 and the rejection order passed by the respondents, after expiry of the notice period of three months will have no effect. Further the reason stated in the impugned order rejecting the request of voluntary retirement is not the one among the reasons stated in FR.56(e)(i) to (v).

10. Similar issue was considered by me in W.P.No.9880 of 2007 (Dr.Annabelle Rajaseharan v. The Secretary to Government, Health and Family Welfare Department, Chennai-9 and two others) by order dated 16.4.2007, wherein a voluntary retirement request was rejected for a reason not stated in Rule 56(e)(i) to (v). In the said order, I have followed the judgment of the Honourable Supreme Court reported in (2001) 3 SCC 290 (Tek Chand v. Dile Ram) regarding the deemed acceptance of voluntary retirement on the expiry of notice period. In the decision reported in 2006 (2) CTC 318 (S.M.A.Mohamed Yusoof v. The Secretary, Government of T.N.) also I have considered similar issue.

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11. Since the submission of voluntary retirement application, its consideration, its acceptance or rejection and if no order is passed, deemed acceptance is clearly stated in the statutory rule viz., FR.56(3), the respondents are not justified in stating some other reason not stated in the statutory rule and they are not entitled to rely on the Government letter dated 25.9.1992, which cannot over ride the statutory rule. The said issue is well settled in the decision of mine reported in 2007 WLR 521 (K.Sampath v. The State of Tamil Nadu and others), wherein I have followed the decisions of the Honourable Supreme Court reported in AIR 1972 SC 1546 (State of Haryana v. Shamsher Jang) and AIR 1967 SC 1910 (Sant Ram Sharma v. State of Rajasthan).

12. In view of the said statutory provision and having regard to the fact that no order having been passed by the respondents rejecting the request of the petitioner before expiry of the three months notice period, I hold, the impugned orders are unsustainable and the petitioner shall be deemed to be voluntarily retired from service from 9.6.1994. Since the petitioner is deemed to be retired from 9.6.1994, his absence after the said date cannot be treated as unauthorised absence and therefore the disciplinary proceeding initiated against the petitioner under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the consequential order of removal of the petitioner from service are also unsustainable. Since the first respondent passed the order on 14.10.2005, removing the petitioner from service subject to the result of O.A.No.735 of 1995 (this writ petition), the said termination order will not have any effect, as this writ petition filed by the petitioner is allowed holding that the petitioner shall be treated as deemed to be voluntarily retired from service from 9.6.1994. The respondents are directed to settle the retirement benefits payable to the petitioner treating him as voluntarily retired from service on 9.6.1994, within a period of three months from the date of receipt of copy of this order.

The writ petition is allowed with the above observations and direction. No costs.

vr

Sd/
Asst. Registrar

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Sub Asst.Registrar

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To
1. The Principal, Government Arts College (Men),
Krishnagiri, Dharmapuri District.

2. The Commissioner, Collegiate Education,
Madras - 6.

+ One cc to M/s P.V Bakthavatchalam, Advocate SR 40755

sg 12/7/07
AVM (co)

Order in
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